



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202 - 2733

JAN 11 2018

Ms. L'Oreal Stepney, P.E.
Deputy Director - Office of Water
Texas Commission on Environmental Quality (MC-158)
P.O. Box 13087
Austin, TX 78711-3087

Re: Variance for NRG Texas Power LLC, TPDES Permit No. 01031-000 (NPDES TX0006386)

Dear Ms. Stepney:

This is in response to the Texas Commission on Environmental Quality's (TCEQ) letter dated November 8, 2017, which requested a temporary variance to the *Texas Surface Water Quality Standards* (TSWQS). The variance applies to the dissolved copper criteria for Spring Gully. The Environmental Protection Agency (EPA) has completed its review of this request which was submitted for review and approval, as required by 40 CFR 131.20.

The NRG Texas Power facility discharges treated wastewater to Spring Gully, thence to Greens Bayou within segment 1006 - Houston Ship Channel Tidal. A minimal aquatic life use is presumed for Spring Gully, for which acute aquatic life criteria are applicable, in accordance with §307.4(d) of the *Texas Surface Water Quality Standards* (TSWQS). Appendix A of the *Texas Surface Water Quality Standards* (TSWQS) includes navigation and industrial water supply uses for segment 1006 and specifies that acute and chronic toxic criteria are applicable to Greens Bayou and the Houston Ship Channel.

The proposed permit for the facility contains a temporary variance to the copper criteria and retains the existing water quality based-limitations for copper. During the three-year variance period, the permittee will conduct a water effect ratio (WER) study for copper in Spring Gully. The study will determine whether a site-specific amendment to water quality standards is justified. Prior to initiating the study and within 90 days of permit issuance, the permittee will develop a work plan for review by TCEQ. If the standard changes are not adopted by TCEQ and approved by EPA, more stringent effluent limitations based on the statewide copper criteria will become effective in the next permit.

Section 7 of the Endangered Species Act states that "all Federal agencies shall...utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered and threatened species" and "each Federal agency shall insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species." EPA has determined that approval of a temporary variance to the copper criteria will have no effect on federally-listed threatened and endangered species or on critical habitat.

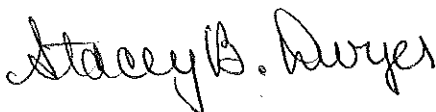
The State Attorney General has previously certified that the variance provision in the Texas standards was duly adopted pursuant to State law. Public participation was completed through the comment period on the proposed permit. The federal regulation for public participation (40 CFR 25.5(b)) states that

public notification must occur 45 days prior to the date of a hearing. It also states that the notification period may be reduced to 30 days when EPA determines that there are no complex or controversial matters to be addressed. EPA has decided that the 30-day notification period is sufficient for this variance request, as the temporary change to standards only applies to one waterbody. No comments on the proposed permit or the variance were received.

EPA considers the issuance of the temporary variance, in conjunction with the public participation process completed by TCEQ, to be consistent with and satisfy, the procedural requirements of 40 CFR 131.20. EPA is approving the variance identified above, pursuant to section 303(c) of the Clean Water Act and the implementing regulations at 40 CFR part 131.

If you or your staff have any questions in this matter, please call me at (214) 665-7101 or contact Diane Evans in the Watershed Management Section at (214) 665-6677.

Sincerely,


for David F. Garcia, P.E.
Acting Director
Water Division

ecc: Michael Redda, TCEQ - Wastewater Permits Section (MC-148)
Debbie Miller, TCEQ - Standards Group (MC-234)